

SENATE BILL NO. 373

INTRODUCED BY G. PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE QUALIFICATIONS FOR FIREFIGHTERS; INCLUDING RURAL FIRE DISTRICTS IN THE DEFINITION OF "EMPLOYER" FOR LAWS GOVERNING THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; REMOVING FIREFIGHTER AGE RESTRICTIONS; PROVIDING RETROACTIVE APPLICABILITY FOR CERTAIN FIREFIGHTERS; PROVIDING FOR QUALIFICATION OF CERTAIN FIREFIGHTERS IN THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; AMENDING SECTIONS 7-33-4107, 7-33-4108, AND 19-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the 60th Legislature enacted Senate Bill No. 532, authorizing participation in the Firefighters' Unified Retirement System by certain fire departments; and

WHEREAS, rural fire districts were among the fire departments authorized to participate in the Firefighters' Unified Retirement System; and

WHEREAS, proponents of Senate Bill No. 532, including the administrator of the Montana Public Employee Retirement Administration, testified that the purpose of authorizing rural fire districts to participate in the Firefighters' Unified Retirement System was to put the districts on a par with municipal fire departments in the recruitment and retention of career firefighters; and

WHEREAS, a full-paid firefighter of a rural fire district who joins the Firefighters' Unified Retirement System may apply Public Employees' Retirement System credits to the Firefighters' Unified Retirement System or may begin accumulating new service credit with the Firefighters' Unified Retirement System; and

WHEREAS, the Montana Public Employees' Retirement Board determined that an individual must have been a paid firefighter prior to the age of 35 in order to have become a member of the Firefighters' Unified Retirement System on September 11, 2008; and

WHEREAS, the 54th Legislature enacted House Bill No. 64, eliminating the maximum age limit of 35 from the statutes governing qualifications of police officers, and rejected a provision pursuant to which the state would have determined that age was a bona fide occupational qualification for the position of police officer; and

WHEREAS, the Montana Legislature should consider the determination by the Montana Public Employees' Retirement Board to be contradictory to its purpose in enacting Senate Bill No. 532 and should

1 consider there to be no rational basis for treating firefighters differently than police officers.

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4
5 **Section 1.** Section 7-33-4107, MCA, is amended to read:

6 **"7-33-4107. Qualifications of firefighters.** ~~The state of Montana determines that age is a valid, bona~~
7 ~~fide occupational qualification for the position of firefighter because of the rigorous physical demands of the~~
8 ~~firefighting profession and the expectation of many years of emergency service. The qualifications of firefighters~~
9 ~~a firefighter shall be are that they the firefighter:~~

10 ~~(1) shall not be more than 34 years of age at the time of original appointment;~~

11 ~~——(2)(1) shall must~~ have passed a physical examination by a practicing physician ~~duly~~ authorized to
12 practice in this state who certifies that the firefighter meets the physical requirements of the position established
13 in the jurisdiction where the firefighter is appointed; and

14 ~~(3)(2) at the option of said a city or town, shall must~~ be qualified voters of the city or town."
15

16 **Section 2.** Section 7-33-4108, MCA, is amended to read:

17 **"7-33-4108. Physical examination.** The examination required by 7-33-4107~~(2)(1) shall must~~ be in
18 writing and filed with the city or town clerk. ~~Such The examination shall must~~ disclose the ability of ~~such the~~
19 applicant to perform the physical work usually required of firefighters in the performance of their duty."
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21 **Section 3.** Section 19-13-104, MCA, is amended to read:

22 **"19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this
23 chapter:

24 (1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a
25 county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban
26 firefighting services, or the entire county included in the county-municipal consolidation.

27 (2) "Compensation" means:

28 (a) for a full-paid firefighter, the remuneration paid from funds controlled by an employer in payment for
29 the member's services before any pretax deductions allowed by state and federal law are made;

30 (b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; and

(ii) maintenance, allowances, and expenses.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means:

(a) any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201; or

(b) a rural fire district established in 7-33-2101.

(5) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(6) "Full-paid firefighter" means a person appointed ~~by an employer as a firefighter under the standards provided in 7-33-4106~~ who meets the qualifications provided in 7-33-4107.

(7) "Highest average compensation" means the monthly compensation of a member averaged over the highest consecutive 36 months of the member's active service or, in the event a member has not served at least 36 consecutive months, the total compensation earned divided by the number of months of service. Lump-sum payments for annual leave paid to the member upon termination of employment may be used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of highest average compensation.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following,

1 if none coincides, the date on which a member reaches both 50 years of age or older and completes 5 or more
2 years of membership service.

3 (9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in
4 excess of \$300 a year for service as a firefighter.

5 (10) "Prior plan" means the fire department relief association plan of a city that elects to join the
6 retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second
7 class.

8 (11) "Retirement date" means the date on which the first payment of benefits is payable.

9 (12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

10 (13) "Surviving spouse" means the spouse married to a member at the time of the member's death."
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12 **NEW SECTION. Section 4. Qualification of certain members.** Any member of the firefighters' unified
13 retirement system on [the effective date of this act] who did not properly qualify for membership in the firefighters'
14 unified retirement system when appointed as a firefighter as provided in 7-33-4106 solely because the firefighter
15 had no full-paid or part-paid experience as a firefighter before reaching 35 years of age must be considered to
16 have been properly qualified for membership in the firefighters' unified retirement system as of the date of
17 appointment. The eligibility of a firefighter described in this section for membership in the system may not be
18 subject to reexamination after [the effective date of this act].
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20 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.
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22 **NEW SECTION. Section 6. Retroactive applicability.** [This act] applies retroactively, within the
23 meaning of 1-2-109, to any full-paid firefighter of a rural fire district who on April 26, 2007, met the qualifications
24 of firefighters pursuant to 7-33-4107 as amended by [this act] and who continues to meet the qualifications of
25 firefighters on [the effective date of this act].
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